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No. 93-743

In The

Supreme Court of the United States

October Term, 1993

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Petitioner,

v.

LARRY WOLLERSHEIM,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeal Of The State Of California, Second Appellate District

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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I. JURISDICTION

On February 23, 1990, petitioner Church of Scientology of California ("Scientology") sought certiorari from this Court in No. 89-1361. It asserted therein all of the grounds asserted herein. (Cf. "Questions Presented" in 89-1361 and 93-743) On April 18, 1991, this Court granted certiorari in 89-1361 on the one issue that is excluded from the instant petition, whether California had failed to establish and enforce clearly defined standards for the award of punitive damages, vacated the Court of Appeal decision and remanded the case to that court for further consideration in light of *Pacific Mutual Life Insurance Company v. Haslip* (1991) 499 U.S. 914, 111 S.Ct. 1032.

Because certiorari in 89-1361 was granted only on the punitive damages issue, and this Court ignored the other grounds upon which it was sought, certiorari as to those other grounds was denied by implication. Since certiorari was not granted four years ago, Scientology should not now be allowed a second bite of the certiorari apple, and this Court lacks jurisdiction to proceed.

II. INTRODUCTION AND STATEMENT OF THE CASE[1]

Scientology says there is no difference between its processes and its beliefs. (2388)[2] Therefore, all its practices, particularly the practice of auditing, should be

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[1] Wollersheim disputes all of the facts set forth in the petition. Thus, he must state the accurate version of the facts as found by the jury and affirmed by the California Court of Appeal.

[2] References with no designation are to the corresponding pages in the reporter's transcript of the trial court proceedings, 102 volumes total. References to "App. A" are to the pages of the Appellant's Appendix in Lieu of Clerk's Transcript, filed in the Court of Appeal. References to "App. AA are to Appellees Appendix, filed in the Court of Appeal.

immunized under the First Amendment because it is a religion entitled to such protection. Thus, it tries to bring even criminal practices within the First Amendment's sphere of absolute protection available only for religious beliefs. It seeks an immunity from this Court for all seasons and conduct. Were the court to accept Scientology's view, it would strip the judiciary of the ability to see the criminal's face behind his adopted religious mask. Immunized by its magic mask, Scientology stridently proclaims that its central practice is religious in order to give its criminal conduct free rein.

Scientology argues that it has received unfair treatment at the hands of California trial judges and appellate courts which caused it to become the inquisitional victim of a heresy trial wherein a jury driven by passion and prejudice unanimously rendered a $30 million verdict in compensatory and punitive damages. Scientology received fair treatment. It was adjudicated a religion, granted special evidentiary *in limine* limitations appropriately restricting evidence at trial. In spite of this fair and special treatment, it constantly and rudely interrupted court proceedings in an attempt to intimidate the judicial search for truth and justice.

Scientology's arguments reason backward from the July 18, 1989 decision of the California Court of Appeal. It starts with that court's reduction of total damages to $2.5 million and concluding that since the court determined that the $30 million verdict had been excessive, the jury's determination on liability was necessarily the result of passion and prejudice. Scientology says the appellate court's reduction illustrates that the jury's verdict was the consequence of such, entitling it to a new trial.

Scientology then threads in the argument that reversal is compelled because the jury may have rendered its

verdict on constitutionally impermissible grounds. (Petition at 4) Again, for this argument Scientology turns to the appellate decision. In addition to reducing the damage award, the appeals court held that the Scientological practice of auditing may be generally entitled to the protection of the First Amendment, but merited no such protection under the coercive, threatening and abusive circumstances of Wollersheim's particular case.

Scientology claims that the jury should have been instructed as it requested: that no liability could be imposed on "Plaintiff's participation in auditing . . . or any of the other religious practices of the Church" and that no evaluation could be made of whether or not auditing was harmful. Scientology also claims that Wollersheim should have sought an instruction to the effect that the auditing allegations could only be actionable if his participation therein was due to physical force or secular threats. (Petition at 7) Scientology reasons next that due to its inference of prejudice from the reduced damage award and the alleged lack of proper instructions, the jury might have based its determination on facts that should have been constitutionally excluded. It ignores the clearly proved fact that Wollersheim engaged in auditing as one of a number of components of the deception and coercion constituting the thought reform program that Scientology ran on him. Auditing was simply one of multiple integral components which constituted Scientology's systematic method of totalitarianism. It was one of the components Scientology used to peel open Lawrence Wollersheim's mind and lay bare his human vulnerability so as to hypnotize him into complete obedience. (2499-2501)

To its weave of constitutional consternation Scientology also threads an inaccurate record reference. It asserts that a

pretrial ruling unconditionally precluded Wollersheim from introducing evidence concerning its belief in and practice of auditing and that the trial judge cavalierly disregarded such ruling. (Petition at 5) Scientology erroneously claims that its central religious practice, auditing, was put on trial and that the jury should have been instructed that as to Wollersheim it could not have found liability for auditing *per se*, but only if it was the result of coercion. Since the jury was not so instructed, it may have based improperly its verdict on auditing *per se*, Scientology says.

Here, Scientology argues once more in effect what it stridently claimed before, during, and after trial below: the aggrgegate effect of the trial of the case was the judicial "inquisition" of this "religion" by conducting a "heresy" trial before a California jury and compounded by the court of appeals which it claims to have failed to engage in an "independent review" of the facts.[3]

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[3] Scientology's claim is insincere. If anything approximates an inquisition, it was the manner in which Scientology conducted itself at trial. It accused the court of "bigotry and prejudice" (1854) and repeatedly charged that it was conducting a "heresy trial." (5082, 5178) Its counsel, Earle Cooley, called an adverse witness a "slimey son-of-a-bitch" (1238) and elicited testimony from one of Scientology's witnesses that plaintiff's counsel was part of a kidnapping conspiracy. (2018-20) He attempted to bully the court by accusing it of complicity in an attempt "to destroy this religion" (2146) and histrionically would storm out of the court room. (2250)

Scientology representatives controlled the court room gallery. (2126-27) They would falsely claim Wollersheim was mocking Scientology before the jury. (5061, 5067-68) Scientologists led by Ken Hoden repeatedly interrupted proceedings requiring ejection. (2150, 2250-54, 2256) There were extended interruptions of the trial where Judge Swearinger candidly discussed his evidentiary rulings with people in the gallery, Scientologists and non-Scientologists alike. He was thoroughly patient after he

As will be described below, there was no pretrial ruling prohibiting evidence regarding auditing, and thus no disregard of such ruling by the trial court (Petition at 5). The lower courts bent over backward to give Scientology a fair trial on one hand, while holding it accountable for what Wollersheim showed had been done to him on the other. The California trial and appellate courts have properly held that while belief is protected, conduct may not be, and, looking at the way that Scientology *acted* toward respondent, have seen that Scientology's conduct is not.

The evidence admitted by the trial court was conscientiously limited only to what happened to Wollersheim, and, despite its fondness for so charging, Scientology's claimed religious practices were not put on trial. The actions approved by its management and carried out pursuant to long-standing written policy by its personnel, which were calculated to ruin and destroy Wollersheim, were, however, tried and have been condemned by every court to review them. This case is, without doubt, one of the most egregious examples of the intentional infliction of emotional distress ever reported.

A. Pretrial Proceedings

Wollersheim never asserted that he enrolled in a religious organization and received ineffective religious counseling. He said that Scientology's conduct toward him was wrongful. (A-397, App. AA, at 18-21) The third cause of action of the second amended complaint alleged that he had been subjected to programming accomplished by auditing processes which focused on the intimacies of Wollersheim's life, including his innermost fears, beliefs and secrets. The

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had sent the jury out of the room. (2403-11, 2421-27, 5065-70, 5480-5522, 5524)

processing and other highly programmed behavioral control techniques stripped Wollersheim of his autonomy and freedom of choice, causing him to become dependent, highly suggestible, obedient and dominated. He was forced to "disconnect" from loved ones. He was audited whenever he threatened to revert to independent judgment. His mental equilibrium was destroyed, and as a remedy he was directed into continued auditing, for a fee. Despite Scientology's promise to maintain confidentiality of the information obtained through auditing, it was divulged to third persons in order to further control and dominate Wollersheim. Scientology used its fair game policy which urged the destruction of its enemies as a tool to dominate Wollersheim and as a justification for the destruction of his business. (App. A 1-18) His theory was that the practice of programming and implementation of brutal policies that were used to subjugate his will and judgment to Scientology were illegal and improper and should be stopped. (14403-04, 14714-17)

Scientology sought summary judgment, alternatively requesting the adjudication of 9 issues. Its third issue request asserted that the First Amendment barred the third cause of action. Its fifth request was that it be deemed a religion. (App. A 40) The law and motion judge denied summary judgment and granted summary adjudication only on the issue that Scientology was a religion. He specifically held that if defendants "acted *as alleged*, their conduct is actionable." (App. A 77) A writ to the court of appeal was unsuccessful as was review in the California Supreme Court. (108-09, 5090, 5172, 5398, 5399, 5400-02)

Thereafter, Scientology sought 12 *in limine* orders. Those granted generally prohibited Wollersheim from introducing (1) evidence of Scientology's belief in and practice of auditing, (2) statements made by any members

of Scientology with respect to the benefits, nature, or efficacy of auditing, and (3) evidence of acts or history as to the successes or failures of auditing. (App. A 79)

The intent of the trial court was to prevent the trial of Scientology's beliefs and practices as a general matter (79), but to allow limited proof thereof inasmuch as they constituted tortious conduct toward Wollersheim. (106) It admonished Scientology saying "You don't have sanctuary with respect to tortious conduct." (112) Stating that "while belief is protected, acts or action may not be," the trial court found many of Scientology's actions were not protected. (A-480; App. A 131) While Scientology construed the order broadly as a blanket prohibition which excluded evidence of auditing (81-83, 91-94, 103-08, 112-14), the trial court noted that on summary judgment the determination was made "that even if there were the conduct that is alleged to have been conducted on Wollersheim was done in a religious setting, it would still be actionable" (98) because "[t]here has been tortious conduct in the context of a process that is actionable." (85) It specifically rejected as "patently ridiculous" Scientology's view that Scientology's auditing of Wollersheim was excluded. (94) Plaintiff's counsel, Charles B. O'Reilly, confirmed "We are not going into the practice and belief of auditing. We are going into what was done to Mr. Wollersheim, and there is nothing religious in that." (100)

Thereafter, the trial court conscientiously imposed an evidentiary restriction limiting evidence having to do with Scientology to what was done to Lawrence Wollersheim, and excluding all evidence of the content of the "upper level materials" which had driven Wollersheim insane. (2390,

5056, 5061, 5086, 5477)[4] It admonished the jury that the basis for expert testimony was to be limited to its consideration of the expert's opinions (2163-65) and that the beliefs of Scientology were not on trial. (5485-5522)

B. The Trial

L. Ron Hubbard, a man who claimed great knowledge about brainwashing, is the source of Scientology. (1127, 2590-92) From 1969 through 1980 while Wollersheim was involved, Scientology, a totalitarian organization, was controlled and managed by L. Ron Hubbard through a highly organized and complex system of "Flag" management (725-741, 787-96, 804-815, 881-84, 942, 956, 1011-14, 1113) manned by members of the elite Sea Organization of which Hubbard was Commodore. (995, 1851, 1867) Management decisions were further reviewed and directed on Hubbard's behalf by an autonomous and anonymous group, the Watchdog Committee, who were part of the Sea Organization echelon called the Commodore's Messengers. (820-21, 940-46) Separate corporate identity was systematically disregarded. (1101)

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[4] For example, all evidence regarding the *content* of Scientology's upper level materials was excluded despite the fact that such materials directly precipitated Wollersheim's mental disorder. (4925, 5056, 5061, 5086, 5477) In response to pressure from Scientologists in the gallery interrupting testimony, and over objection of Wollersheim's counsel, the court specifically admonished the jury that Wollersheim's testimony "in no way reflect[s] or represent[s] the teachings and beliefs of the Church of Scientology. (5480-5522)

During Wollersheim's testimony, the court admonished the jury that his recounting of matters having to do with Scientology were relevant only to his state of mind on the issue of emotional distress. (5539, 5541)

The Guardian's Office, run by Hubbard's wife, was one of three autonomous networks in Scientology controlled by Hubbard which superseded corporate boundaries, was outside normal chains of command, and was senior in authority to all except Hubbard. It consisted of five bureaus: intelligence and internal security, public relations, finance, legal matters, and social front groups. The Guardian's Office had a unit in every Scientology organization, from local levels to international management. (770-77, 815-19, 948-52, 1007, 1018, 1409-19, 1431-33, 1504-09) Its role was to establish the indispensability of Scientology and to protect and guard it against its perceived enemies by running intelligence operations or black propaganda campaigns against them. (1196, 1424, 1852, 1858-59) The protection of the organization was paramount. (1978)

Scientology's system of justice called "ethics" is used to control its members. (809-10, 1169) As a person became dominated by Scientology, it molded his behavior into alignment with its goals. (1486-87) Such ethics are determined by a member's productive activity and advancement in Scientology auditing. (955-56, 1420-21, 1754) One's ethical standing was determined by the designation of his "condition" by his superiors. When a member was assigned a "lower condition," he was given a "formula" to follow in order to be assigned the next higher condition. (844, 1000-03, 1103, 1488) A formula for a lower condition always contained a punishment which could include assignment to the Rehabilitation Project Force (known by its initials "RPF") which was Scientology's prison. (5006)

The RPF was a Scientology institution set up according to Hubbard's uniform standards and to which individuals who dissented, or failed to comply with

Scientology policy were assigned for punishment. An individual's assignment to the RPF was indefinite and involved long hours of hard manual labor, poor food, and little sleep for which he had no recourse. He was kept under guard. (823-28, 833, 838-847, 852-53, 1003)

A "potential trouble source" is someone connected to a "suppressive person." A person may be labelled a "potential trouble source" if he "rollercoasters, i.e. if he advances and then falls back in his expect progress; or if he has a family member or friend who is critical of Scientology and is thus labelled by management a "suppressive person" because of his disagreement or opposition. (855-58, 1096, 1128, 1473, 1520-21, 4939) Treatment of potential trouble sources is governed by written policy. (1469-72) Scientologists must sever all ties, or "disconnect" from suppressive persons. (1039-42, 1477) A potential trouble source requires more auditing to relieve him of the effect of being connected to a suppressive person. (1522) Even a person who left Scientology without permission is considered a suppressive person. (1556-59) Such persons merit the attention of the Guardian's Office. (1173)

Scientology's most extreme ethics sanction is the suppressive person "declare." (1406) Labelling someone a suppressive person results in the issuance of a written "declare" publicly branding him as an "enemy of the Church of Scientology," one who is guilty of "enemy acts." (923) Once a person is declared a suppressive person, based upon intractable written policy, he is subject to Scientology's policy of *fair game*. An enemy, as *fair game*, may be deprived of property, injured by any means, sued, tricked, lied to, or destroyed. (2029) Although publicly denied, Scientology practices *fair game* as part of internal security. (924-35, 1402-05) To protect Scientology, the

Guardian's Office took actions, including running covert intelligence operations, to destroy the suppressive person. (860, 1093, 1181-89, 1406-07, 1473-89, 1882-83)

"Auditing" and training, Scientology's main focus, were developed to keep people involved in paying money to Scientology (1091, 1166) Training is where one learns to be an auditor. Processing is when one receives auditing. (1161) When a person is audited, he holds two cans that are attached to a meter which registers responses to a standardized set of questions. (1089-90, 1106)[5] Auditing was a key component of the thought reform program which brainwashed Wollersheim, and turned him into a "deployable agent of the Church of Scientology." (2502-05) Scientologists are all processed or "audited" (750) according to stringent written standards deviation from which is punishable by the assignment of Scientology ethics conditions. (1267)

A "rock slam" meter read indicates the presence of a hidden crime against Scientology which merited the attention of the internal security bureau of the Guardian's Office and could result in an immediate assignment to the

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[5] The E-Meter picks up areas of stress in human emotional response. (1812) An E-Meter is a psychogalvanometer which measures moisture on the skin's surface. It is Scientology's asserted religious artifact and central to what Scientology characterizes as its "peaceful, voluntary religious practice" of auditing. (A-339) When being "audited" an individual holds the two cans of the E-Meter while a series of very programmed questions are always asked in the same sequence. (2158) The auditor "issues commands" and the preclear responds. (4923) The responses of the auditee, called a "pre clear" or "pc" were written down and placed in a folder. (1992, 4829) Within his first 10 days Wollersheim was introduced to the E-Meter. (4829-30) He was told that its effectiveness was in registering what was going on in his mind. (4831)

RPF. (1108-11) The harshest action using the E-Meter was a "security check" wherein it was used to interrogate a person considered to pose a security threat to the organization. (918-19, 1107)

Scientology kept extensive files on all of its members which contained large amounts of detailed and intimate information. (958-61, 1563-71) For each Scientologist there could be files for ethics, personnel, processing, technical administration, management, central and treasury. (865-879) The Guardian's Office had access to all files. (866, 876-77) It would cull them when it was suspected that a member was a sufficient risk of being a potential trouble source to justify handling. (1473-78, 1485-90, 1498-1501, 1712-13, 1860-62) When a member left Scientology, all his files would go to the Intelligence Bureau of the Guardian's Office. (961-62) A staff member could not leave Scientology without permission and was subject to being held under guard. (1103-05)

Upon initial contact with a Scientologist recruiter, none of the above is disclosed to a member of the public. Instead, he is given a psychometric test, the Oxford Capacity Analysis test, the result of which the recruiter will use to criticize him and then to advise him that Scientology will provide the solution to the problems it claims to have identified for him. (1286, 1294-1325, 754-55, 888-89)

Scientology destroyed Wollersheim's autonomy by subjecting him to a program of thought reform or brainwashing[6] without his knowledge or consent. In order to

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[6] Brainwashing is a lay term not used by scholars studying thought reform because it is too narrow in the sense that it implies the necessary presence of a gun to the head, barbed wire and restraints and too broad inasmuch as it colloquially

conduct a thought reform program, six elements must be present simultaneously. (2093) All six elements were present with Wollersheim in Scientology and provided the control mechanism whereby Scientology dominated Wollersheim.[7] (2078-2107, 2269-2331, 2392-2403, 2412-19, 2429-61, 2593, 2606)

Wollersheim became involved in Scientology in early 1969 in San Francisco as a result of being manipulated by what Scientology represented as his strengths and weaknesses ascertained by a personality test which was intended to sell him Scientology processes (RT 1286, 1294-1325, 1571, 4770-4772, 4783, 4790-4792, 4796-4807,

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references any technique designed to manipulate human thought or action against the desire, will or knowledge of the individual. The process of the two, however, is the same. (2080-84) Margaret Thaler Singer is a published expert on thought reform, having studied it on behalf of the United States Army concerning individuals who had been subjected to thought reform programs in indoctrination camps in Korea and mainland China. She has also studied individuals in large group awareness training programs, who were subjected to a second generation of thought reform programs. All told, she studied 3-4,000 such persons. She had practiced psychology for 44 years at the time of trial. (2054-59, 2101, 2481, 2617-36, 2771-72, 2792)

[7] The six elements are (1) control over a person's physical environment, social contacts and available time; (2) stripping the person away from his former social support system, his family and friends; (3) the manipulation of rewards and punishments to accomplish the suppression of the person's old social behavior; (4) the manipulation of rewards and punishments to elicit the new behavior and type of thinking that management wants the person to display; (5) the person is unaware that one step at a time the procedures to which he is being exposed are gradually causing him to make these behavioral changes that management wants and to suppress his old behavior; and (6) the program must be carried out in a totalitarian, authoritarian setting. (2079-80)

4823-24, 5104-05). He was given a moneyback guarantee. (5102) In consequence, Wollersheim signed up for the "communications course." (4815) The registrar told him that for every hour of Dianetic Therapy, his I.Q. would increase by one point and that he would know more about the mind than any psychiatrist. (5107, 5117) The registrar stated that Scientology was "a precise science built on mathematical formulas and solidity of engineering concepts that was researched and tested and documented and was developed by a gentleman named L. Ron Hubbard and he was a Ph.D. He was a nuclear physicist." (5109)

The practices of Scientology seriously damaged Wollersheim, causing him to sustain permanent psychological injury. His expert psychologist diagnosed him as (1) bipolar disorder, mixed rapid cycling with psychotic features, (2) bipolar disorder, mixed rapid cycling without psychotic features, (3) psychogenic amnesia, (4) panic attacks, and (5) chronic post-traumatic stress disorder. (2120-21, 2475, 2481, 2518-39)[8] Wollersheim underwent five distinct episodes where he became psychotic, having cataclysmic consequences for his moral and mental health. (2159, 2187) In Dr. Singer's opinion, Wollersheim was not a fake. (2515-17)

In the initial episodes Larry performed repetitive training routines and processes which induced him to

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[8] A rapid cycling bipolar disorder (manic depressive) means that within one year a person has two periods of great elation and deep depression. Wollersheim began hating people, experienced extreme elation and then the fragmentation of personality into pieces that he labelled demons. His emotions disintegrated to the extent that he became psychotic. (2122-25, 2157-59, 5064-65, 5071, 5075) He had no symptoms of bipolar disorder prior to affiliating with Scientology. (2259, 2265)

enter an intense hypnotic trance state without his knowledge or consent. (1282-86, 1326-43, 2160-61, 2167-86, 2659-61, 4822-28) He became disoriented, felt drugged, and started laughing. The Scientologists connected him to an E-Meter, praised him, and registered him to buy auditing. (4827-38)

From 1970-1972 Wollersheim spent thousands of dollars on hundreds of hours of auditing processing and courses. (4848-75) His father, opposed to his son's invovlement with Scientology, was labelled a suppressive person from whom Wollersheim was ordered to disconnect or be assigned a severe ethics condition. (4939-45, 2309) Wollersheim developed disgust and hatred toward his father because he was a suppressive person, considering shooting him. (4947-48, 2452-54)

In March 1972 Wollersheim travelled alone from Milwaukee to Los Angeles to receive an auditing process called "Power." (4871-78) Such processing triggered his first rapidly cycling bipolar disorder. (2188)[9] He was praised for involuntary trance induction and undiagnosed mental deterioration. (4917, 4926-29, 4999) He was told that joining the Sea Organization and being on staff full-time entitled him to receive auditing for free or at half price. Recruiters signed him up. (4889, 4930) As he continued to psychologically deteriorate (4931), his

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[9] Larry described this episode as almost being knocked unconscious, feeling disoriented and euphoric. He had never felt the strong and strange waves of physical sensation rippling through his nervous system. From extreme euphoria he plummeted to deep depression. He was ordered to more auditing. As time passed, he heard voices in his head, felt compulsion of rage, violence and sex. The rapid cycling bipolar disorder was directly caused by his interactions and conduct with Scientology processing. Scientology told him his mental illness was normal and to be expected considering the training he was in. (2189-93, 2475, 5050-52, 5059-64) Scientology's program, including auditing, proximately caused severe mental disorders. (2498-2502)

seniors told him not to worry, he just needed more auditing. (4932-34)[10]

Before moving from Milwaukee to Los Angeles, Wollersheim obeyed orders issued by the Guardian's Office to first fire his employees because they were enemies of Scientology and to run a covert operation on them. (4839, 4895-4903) Second, despite his wife and parents' opposition to selling his business, Wollersheim complied with the Guardian Order to do so. (4906-11, 5135-37, 5220)

By late 1972 he moved his wife and their son to California to Scientology staff quarters where 90 people lived in a 10 room house. (4880-81) For 6 weeks he trained on a ship for the Sea Organization. (4882-83, 9448-49) The training concluded with 15 hours of E-Metered security checking regarding sex, crime, abuse, possible links to the IRS, the government, the press. (4950-53) He returned to a post on staff and worked 17 hours per day for $18 per week. (4954-56)

Conditions were oppressive and the couple resolved to leave Scientology, but were convinced by management to defer leaving for two days. (4050-55) Management split Wollersheim and his wife up. (4963, 4066) Suffering from the rapid cycling bipolar disorder, Larry believed his seniors who explained that his behavior was caused by him being bad and evil which required assignment to the RPF where another cataclysmic event occurred. (1111-12, 2187, 2196, 2202, 2238-39, 4965, 5006-07, 5011-12, 5020-24)

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[10] He would feel aggressive and furiously work on Scientology projects and then be unable to do anything. (4997-99) Ethics officers repeatedly told Wollersheim that his highs and lows were caused by him being a potential trouble source and he needed more auditing. (5000-02)

While he was in the RPF,[11] his wife, Edee, was assigned to the kitchen where a large industrial size container of boiling water spilled on her, causing extensive and severe burning of her body, which required extended hospitalization. (4056-4060) Management told Wollersheim to go to the hospital and convince Edee not to sue or otherwise cause trouble for Scientology and threatened that if she sued they'd consider her suppressive. To disconnect was required. (4965-66, 4969) Larry had been sufficiently thought reformed by Scientology, he was desensitized and obedient. (2199-2200) Edee was a suppressive person from whom he had to disconnect. (4970, 4974-75)

While she was hospitalized, she also suffered a miscarriage. Larry warned her not to sue Scientology. (4082, 4977) He showed no compassion, warmth or love for her. (4070) Stone cold (4967), he told her they couldn't live together anymore. He wouldn't tell her why. (4072)

Back in the RPF and tormented by his treatment of his wife, Larry tried to leave the ship and was physically restrained by three Sea Organization members who convinced him that his depression was because he was evil. (2238-39, 5014-19) Scientology used materials from his preclear file as the basis for auditing on the subject of his evil intentions. (5007-08, 5116, 5026) Wollersheim was terrified of being labelled a suppressive person and becoming *fair game*. (2286-90) He was a broken man. (2533)

Edee was told to move and that Larry would divorce her; she was now a liability to Scientology. (4073-75) When Wollersheim was released from the RPF, Edee was gone and no one advised him where she went. (4075, 4979)

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[11] He slept four hours per night in the ship's hold, a tiny room with no ventilation where 30 people were stacked in bunks nine high. (5004-05)

In 1974 management advised Wollersheim that he had "rock slammed" on the E-Meter which indicated that he was an evil human being, unsafe to be around, and thus again was sentenced to the Rehabilitation Project Force. (2606, 4992-93) Wollersheim continually told management that something was wrong and he shouldn't be there. (5008, 5038)

Similar to the "Power" incident, Wollersheim experienced progressively more intense bipolar cycling after being audited on the upper level Scientology materials in 1975-1976. (5043-5047, 5053, 5055, 5149) He heard the voices of demons talking to him and believed he was going to die. Not sleeping for three days, he drank liquor to quell the voices. Labelled a security risk, he was dismissed from staff and given a bill for $9,000.[12]

Having panic attacks, he was told that it was a life and death necessity that he continue auditing. He raised the money fast. (2240-43, 5002-03) He felt like he had burst apart and mentally fragmented into pieces, experiencing the disintegration of his personal identity. (2255-56, 5064-65) He "began to believe that [he] was hundreds of different people and these people could take control and cause [him] to do things that [he] would never do and dominate [his] mind and [his] life." (5071) He was directed not to seek help from any health care provider all of whom Scientology generally labelled as suppressive (2279) and directed to receive more auditing to "repair" the problem. (5057-58, 5149-51)

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[12] Scientology processing for Sea Organization staff members is not really free, but is a potent form of economic coercion. It is the subject of a "freeloader debt." That is, payment for total services used becomes due immediately if a person leaves or is kicked off staff. Thus, when Scientology kicked Wollersheim off staff because of his mental illness which they said only more auditing could heal, they told him he would have to pay his $9,000 freeloader debt before he could get the auditing they told him he needed. (1190-92)

In Spring 1975 Wollersheim married Angela Vash, a staff member for the Legal Division of the Guardian's Office at the Celebrity Center in Los Angeles (5073) and he subsequently told her that something was wrong with the upper level materials. (5074)

On June 16, 1976, knowing he would draw a quick reaction from the Guardian's Office (1478, 1495, 1874, 1972-75) Wollersheim wrote a letter demanding his money back (5071-72, 5101-02), threatening to expose Scientology to *Time Magazine* and to disclose that he had looked at confidential files in the Guardian's Office without authorization. (5076) He was then a Sea Organization member working 18 hour days. (5054-55)

He told John Fischer in the Guardian's Office of the mental trauma he experienced and that he was quitting Scientology. (5138) Fischer escorted Wollersheim into a room for more auditing. (5139-41) To protect Scientology Fischer and other Guardian Office personnel had Wollersheim sign affidavits created from incidents recorded in his confidential auditing files. (1491-92, 5142, 5152-54)

After he signed the affidavits or "crime lists", he was dismissed from the Sea Organization, assigned another freeloader debt, for $7,200 and was told that he was a "security risk" and to go fix himself. (5054, 5156-59, 5162-63) His wife divorced him. (5077, 5163)

In 1978 Wollersheim experienced a fourth cataclysmic event which contributed to his psychosis after being audited on upper level materials, from which he learned that he had to protect himself because he was anxious that he could be "harmed by other people's thoughts." He believed his past evil had been great as he had been a ninja warrior, an imperial tyrant named "Thorgon," and a character called "ultraviolence." He felt he was many people, and he was afraid because he had been warned that the process he was auditing on could kill him. (2462-66, 2484, 2491, 2496-98) Scientology led

Wollersheim into making up stories about being an evil character in past lives. (2601-02)

The fifth cataclysmic psychotic episode occurred in 1979 after receiving upper level processing in "New Era Dianetics for Operating Thetans." He was in a science fiction, ultra-evil personality. His identity was so split apart that he couldn't spot his own basic personality. He knew Scientology was killing him, but he had been so trained not to criticize Scientology because of the consequences of dissent that he believed the only way to end the pain and not be disloyal was to shoot himself with a revolver. When Scientologists found him with the gun, he was ordered to further auditing, and as he was audited he developed further fragmenting of his personality. (2476, 2506-39) Scientology disregarded the link between auditing and Wollersheim's mental disorder, choosing to label his basic identity suppressive and evil which caused him to be in terror of his own basic personality. Being an evil, suppressive person was the cause of his problems. He lived in bipolar disordered madness and terror. (2549-50)

Additional abuse took place, including the *fair game* destruction of his businesses. They are however, beyond the page limits of this opposition.

III. REASONS FOR DENYING THE WRIT

A. There Was An Adequate Factual Basis For Punitive Damages And In Its Solicitude Toward A Religiously-Masked Criminal Organization; The Court of Appeal Erred In Reducing Damages Because Scientology's Conduct Was So Bad That The Jury's $25 Million Verdict Was Supported By The Facts

The appellate court misconstrued the evidence when it short-changed Wollersheim by stating that "Scientology's conduct only aggravated a pre-existing psychological condition. Scientology did not create the condition" and then slashed his award of $5 million in compensatory

damages to $500,000. (*Wollersheim v. Church of Scientology* (1989) 212 Cal.App.3d 872, 905-06, *rev. den.* (10/26/89), *cert. grtd., vac. and remd.* (1991) 111 S.Ct. 1298; *affirmed on remd. Wollersheim v. Church of Scientology* (1992) 6 Cal.Rptr.2d 532.

The undisputed testimony is that Wollersheim had no symptom of bipolar disorder prior to affiliating with Scientology. (2259-62, 2504) Before entry he and his family saw himself as an average person. After exposure to Scientology's thought reform program he was induced to great fear about how terribly evil he was, ultimately resulting in severe mental disorder. (2265, 2539, 2580)

Wollersheim is dependent upon Lithium in order to keep the bipolar rapid cycling disorder in remission. (2520-26) Bipolar rapid cycling disorder is not curable. (2524)

Scientology subjected Wollersheim to outrageous stress. It used brainwashing procedures to induce trance-states of extreme suggestibility wherein he was stripped of his psychological defenses through auditing and then convinced that he was evil all of which induced the bipolar disorder. (2475, 2499-2505, 2534, 2549, 2594)

Wollersheim had a latent and dormant genetic predisposition to bipolar disorder which Scientology's stresses triggered into a full-blown disorder. (2539-42) Even without the bipolar, the treatment he received still caused psychogenic amnesia, panic attacks and post traumatic stress disorder from which he may continue to suffer for 20 years. (2543, 2551)

In concluding that the distress inflicted on Wollersheim was merely the exacerbation of a preexisting condition, the court commits an error unsupported by fact resulting in an injustice. Scientology labelled him a suppressive person and used *fair game* to destroy his

business, while he was in Scientology and after he left, in retaliation for Wollersheim being driven insane by Scientology's brainwashing and auditing which caused uncontrollable terror and extreme psychosis. The loss to his business alone was approximately $650,000, greatly exceeding the appellate court's reduction to $500,000. (5220-24, 5235, 5257-70, 5977, 14,512, 14,404) Moreover, the intentional ruination of Wollersheim's business led to his insolvency and the destruction of his business reputation. (5221, 5255-56, 6343-47, 6352)

Because of the nature of the deliberately inflicted, severe and permanent emotional distress, and destruction of his business, the only inquiry is whether the compensatory award was excessive in relation to the injury. (*Malandris v. Merrill Lynch, Pierce, Fenner & Smith* (1981) 703 F.2d 1152, 1169.) Indeed, $5 million for deliberately driving Wollersheim permanently, but treatably insane, destroying two marriages including his relationship with his son, exploiting him for over 10 years, and destroying his business while he was in and after he left Scientology is neither unreasonable nor excessive. "[H]uman suffering . . . cannot be evaluated arithmetically." (*Id.* at 1170)

Moreover, the evidence showed that, after Wollersheim filed his complaint, in 1981 and 1985 management transferred 90% of its assets out of defendant Church of Scientology of California (14,309-11) to other entities subject to Hubbard's control. (7859-62, 7912-14, 7941-44)[13] This was

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[13] As of December 1979, all of Scientology's management components were housed inside Church of Scientology of California: Flag R [Ron] Accounts, Watch Dog Committee, Golden Era Studios, Commodore's Messengers Organization, Sea Organization, Flag Estates, Flag Service Organization,

part of a corporate reorganization that was intended as a coverup of past criminal activity and for future fraud involving Scientology management and its attorneys. (*United States v. Zolin* (9th Cir. 1990) 905 F.2d 1344, 1345; *cert. denied, Church of Scientology v. United States* (1991) 111 S.Ct. 1309)[14] Wollersheim's offered to prove that Scientology transferred everything out of the nominal structure of the corporation between the time Wollersheim's action was filed at the start of trial. (14,316-14,343) At the time of trial petitioner claimed its worth was $18 million. (14,343)

Scientology, in offering net worth evidence that is the result of such activity, is exploiting the corporate manipulation of the Guardian's Office to guard and protect Scientology against the jury's considered justice. Thus, it constitutes a fraud that merits the equitable intervention of this Court. (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.* (1944) 322 U.S. 238)

Commodore's Messengers Organization Flag, Commodore's Messengers Organization Pacific, Flag Bureau/International Management Organization, Flag Operation Liaison Officer West United States, Flag Operation Liaison Officer Eastern United States, American Saint Hill Organization, Organization Los Angeles, Publications, San Francisco Organization, Los Angeles Organization. (7940-44) Counsel was prevented from inquiring as to the value of the components that were transfered out of Church of Scientology of California. The value of the transferred assets was $340 million. (14, 312-43)

[14] See, *Church of Spiritual Technology v. United States* (U.S. Claims Court, No. 581-88T, June 29, 1992) Bureau of National Affairs Tax Decisions and Rulings (No. 131), July 8, 1992. Therein, the corporate structure of Scientology, is described as a *"deceptis visus." Id.* at K-5 to K-7. Its financial structure and objectives, including criminal conspiracies, are discussed at K-9 to K-11.

Assuming arguendo, that the appellate court was correct, its reduction of the award was proper. Scientology's reliance on *Minneapolis, etc., Ry. v. Moquin* (1931) 283 U.S. 520, 521, is inapposite because *Moquin* was not announcing a rule of federal due process to guide litigation in state courts. *Moquin* involved a federal action tried in state court and sets forth a rule of federal law that is applicable only to federal cases, not to state tort actions as here.

Rather, the applicable rule is that where, *as here*, there is no evidence or finding that passion and prejudice affected the liability finding, reduction of damages is proper. (*Seymore v. Summa Vista Cinema, Inc.* (9th Cir. 1987) 809 F.2d 1385, 1387; *Malandris, supra*; *Edwards v. Sears-Roebuck & Co.* (5th Cir. 1975) 512 F.2d 276, 282-83; *Sabella v. Southern Pacific Co.* (1969) 70 Cal.2d 311, 316; *Linn v. United Plant Guard Workers* (1966) 383 U.S. 53, 65-66; *Curtis Publ. Co. v. Butts* (1967) 388 U.S. 130, 159-60)[15] There is nothing in the trial record to which Scientology can point to show that any improper jury action contaminated the liability finding. The Court of Appeal never made any factual finding of prejudice or passion.

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[15] Contrary to Scientology's argument, the citation of *Moquin* in *Curtis* does not rebut the appellate court in *Wollersheim II*. *Curtis'* citation of *Moquin* was in response to the claim of the magazine publisher that he should be immune from punitive damages because such might destroy his business resulting in a prior restraint of his First Amendment rights. The Court stated that constitutional guarantees are adequately protected under the facts of *Curtis* by judicial control over excessive jury verdicts. There is a notable absence of any discussion of due process.

B. The Judgment Does Not Violate The First Amendment

Scientology gained Wollersheim's allegiance by employing deception and hypnotic procedures as necessary parts of a thought reform program which constituted systematic brainwashing. Scientology lied to him, manipulated him, hypnotized him, and coerced him, physically, psychologically and economically. (2394-99)

The trial court assiduously attended to the exclusion of evidence which raised an issue whether or not any Scientology belief was true or false. During trial, Scientology repeated relied on a California appellate court decision for the proposition that to continue with the trial was an unconstitutional abridgement of religious liberty. (*Molko v. Holy Spirit Association* (1986) 179 Cal.App.3d 450) The opinion, however, was reversed.[16]

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[16] The court of appeal *Molko* decision was published during the middle of the trial in the instant case and was not reversed until long after the trial was over. During trial Scientology seized upon the opinion claiming that it was based on their briefs and arguments (5088) which made the melodramatic claim that the proceeding was a heresy trial. (5082-84) It argued that testimony on its brainwashing conduct violated its right to its religious beliefs (5088-96) because such testimony constituted a constitutionally prohibited judicial inquiry into the truth or validity of religious faith which required grant of a motion for mistrial. (5169-80) Also based on the *Molko* opinion, Scientology moved to strike all of Dr. Singer's testimony. (5180)

Ironically, one of Scientology's attorneys asserted that the facts in the *Molko* opinion were "on all fours" with those at bar. (5087) In light of the fact that Scientology failed to cite this important and far-reaching case in its Petition shows that it no longer adheres to the "on all fours" approach.

The California Supreme Court has condemned non-consensual brainwashing[17] as constituting a danger meriting suppression by the state's police power. The potential for harm from such practices has been clearly recognized and condemned by the California Supreme Court in *Molko* where Justice Mosk stated that there is a compelling state interest in restricting coercive religious practices because such practices can be extremely destructive both to individuals and to their families. He stated:

> We must next consider whether a compelling state interest justifies the marginal burden such liability imposes on the Church's free exercise rights. We have no difficulty in finding such an interest in the "substantial threat to public safety, peace or order" the Church's allegedly fraudulent conduct poses. (*Sherbert v. Verner, supra,* 374 U.S. at p. 403 . . .) For it is one thing when a person knowingly and voluntarily submits to a process involving coercive influence, as a novice does on entering a monastery or a seminary. (See Schein, *Coercive Persuasion* (1961) p. 272.) But it is quite another when a person is

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[17] "Brainwashing is 'a forcible indoctrination to induce someone to give up basic political, social or religious beliefs and attitudes and to accept contrasting regimented ideas.' [Citation.] The specific methods of indoctrination vary, but the basic theory is that brainwashing 'is fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure, and a clear assertion of authority and dominion. The aftermath of indoctrination is a severe impairment of autonomy and [of] the ability to think independently, which induces a subject's unyielding compliance and the rupture of past connections, affiliations, and associations. [Citation.]' " (*Molko v. Holy Spirit Association* (1988) 46 Cal.3d 1092, 1109, *cert. denied* 109 S.Ct 2110.)

subjected to coercive persuasion without his knowledge or consent. While some persons who experience coercive persuasion emerge unscathed, many others develop serious and sometimes irreversible physical and psychiatric disorders, up to and including schizophrenia, self-mutilation, and suicide. (See generally Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment, supra,* 51 So.Cal.L.Rev. 1, 10-25, and sources cited therein.) The state clearly has a compelling interest in preventing its citizens from being deceived into submitting unknowingly to such a potentially dangerous process.

The state has an equally compelling interest in protecting the family institution. (See, e.g. *Reynolds v. United States, supra,* 98 U.S. 145, 165-66 . . . ; *Meyer v. Nebraska* (1923) 262 U.S. 390, 399-403 . . . ; *Pierce v. Society of Sisters* (1925) 268 U.S. 510, 534-535 . . . ; *Moore v. City of East Cleveland* (1977) 431 U.S. 494, 503-504 . . .) Since the family almost invariably suffers great stress and sometimes incurs significant financial loss when one of its members is unknowingly subjected to coercive persuasion (Enroth, *Youth, Brainwashing, and the Extremist Cults* (1977) pp. 199-201), the state has a compelling interest in protecting families from suffering such impairments as a result of fraud and deception.

We conclude, therefore, that although liability for deceptive recruitment practices imposes a marginal burden on the Church's free exercise of religion, the burden is justified by the compelling state interest in protecting individuals and families from the substantial threat to public safety, peace and order posed by the fraudulent induction of unconsenting individuals into an atmosphere of coercive persuasion.

(*Id.* 46 Cal.3d at 1117-18.)

The California Supreme Court's decision in *Molko* complies with the reasoning of this Court. In *Employment Division v. Smith* (1990) 494 U.S. ___, 108 L.Ed.2d 876, this Court recognized that the " 'exercise of religion' often involves not only belief and profession, but the performance of . . . physical acts." (*Id.* at 885) Native Americans sought to expand "free exercise" in order to participate in their ancient ceremony involving the use of peyote which was a violation of law. The Court held "We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the state is free to regulate." (*Ibid.*)

Not only is brainwashing deadly, in the case at bar it was particularly and poignantly wrong. It merits no immunity. To characterize auditing as a peaceful religious practice in the circumstances of this case reveals a gargantuan capacity for denial on one hand and self interest on the other. Simply, it does not wash. From the very outset, belief was separated from conduct, as it should be. Scientology's relentless effort to expand belief so as to encompass conduct was rebuffed, and Wollersheim was excluded from discussing the content of the materials that helped drive him insane. The trial court recognized that "it is sometimes like walking a tightrope." (2406) Recognizing that, the trial judge balanced the interests of both parties and conducted a very fair and even-handed trial. When the jury rendered its $30 million verdict against Scientology, he denied the motions for a new trial and judgment notwithstanding the verdict.

C. The Court Of Appeal Independently Reviewed The Record

The California Court of Appeal engaged in an exhaustive, as well as independent review of the trial

record. It does not recite a single fact for which there is not substantial evidentiary support. It is not required to give citations to the record. If this Court in any way doubts the accuracy of the facts found by the Court of Appeal, Lawrence Dominic Wollersheim invites it to conduct its own independent review. The result will inevitably be the same. The trial court conducted a fair trial and properly instructed the jury providing numerous special instructions, over objection, at Scientology's request.[18]

Jury deliberations commmenced at 9:00 a.m. on Friday, July 11, 1986. (14801) On Tuesday, July 22, 1986 at 3:11 p.m. the jury returned its verdict. Unanimously, it rejected the special verdict on the statute of limitations defense, and found that the torts of intentional infliction of emotional distress, and negligent infliction of emotional distress had been proved. It rendered compensatory damages in the amount of $5 million and punitive damages in the amount of $25 million. After the jurors

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[18] Such instructions included: (1) prohibiting the jury from considering any evidence on misrepresentation;

(2) instructing the jury that Scientology is a religion;

(3) prohibiting any inquiry into (a) the validity of Scientology's beliefs and practices, including auditing,

(b) the beliefs and practices of its members, and (c) prohibiting basing any verdict on an evaluation of the validity of the religious beliefs and practices of Scientology.

(4) advising the jury religious belief need not be grounded in faith in a supreme being nor in religious practices followed by more widely known churches or religions; (5) advising the jury that it was not to attempt to determine the truth of any religious statement, or sift through the teachings of Scientology and pick out individual statements for scrutiny whether each standing alone is religious (14779); and (6) advising the jury that it is Scientology's First Amendment right "to solicit funds for its own use." (14777-79)

were individually polled, they were discharged. *(14869-14878)*

The evidence of intentional infliction of emotional distress in this case was overwhelming. The sensitivity, balance, poise, patience, flexibility and judgment of the trial court were impeccable. The court room skill and human respect for the court, the jurors, witnesses and opposing counsel were astonishing. The jury rendered its verdict.

IV. CONCLUSION

Based upon the foregoing arguments respondent Lawrence D. Wollersheim respectfully submits that Scientology's petition should be denied.

Respectfully submitted,

DATED: February 16, 1994

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